

**Hamilton Nursing Home and Service Employees
International Union Local 706, AFL-CIO-CLC,
Petitioner. Case 23-RC-5167**

25 June 1984

**DECISION AND DIRECTION OF
SECOND ELECTION**

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS**

Pursuant to a Stipulation for Certification Upon Consent Election, a secret-ballot election was conducted 14 October 1983.¹ The tally of ballots shows 33 for and 34 against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Petitioner filed objections to conduct affecting the results of the election. Following an investigation, the Regional Director issued a notice of hearing on Objections 1 and 2 and other conduct discovered during the investigation. A hearing was conducted 28 November.

On 23 December the hearing officer issued his report in which he recommended that Objections 1 and 2 be sustained and that the election be set aside. The Employer filed exceptions to the hearing officer's report.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the hearing officer's report and the exceptions and has decided to adopt

the hearing officer's rulings,² findings,³ conclusions, and recommendations, as modified below.

We find, in agreement with the hearing officer, that the Employer created the impression of surveillance of union meetings. During a conversation at the nursing home, President Hamilton told employee Savoy that he knew who was attending union meetings and that he was "going to be watching them close." Hamilton then named four employees who had attended union meetings. Savoy subsequently reported the conversation to at least two employees, and they repeated the story to other employees.

In the circumstances of this case, where a change of only a few votes would have altered the election results and where a number of employees knew of the objectionable conduct by the Employer's president, we find that the conduct substantially interfered with the election. Cf. *Caron International, Inc.*, 246 NLRB 1120 (1979). Accordingly, we adopt the hearing officer's recommendation that the election be set aside and a second election held.⁴

[Direction of Second Election omitted from publication.]

² The Employer claims that the hearing officer's conditioning sequestering the Petitioner's witnesses on the Employer's agreeing to sequester the company president deprived the Employer of the representative of its choice. The Regional Director denied the Employer's prehearing appeal of the hearing officer's ruling. We find no merit in this exception. The hearing officer advised the Employer that sequestration is not required in representation cases, but agreed to sequester the Petitioner's witnesses if the Employer's primary witness was also excluded. As sequestration is a matter of right only in an unfair labor practice case, *Fall River Savings Bank*, 246 NLRB 831 (1979), *enfd.* 649 F.2d 50 (1st Cir. 1981), we find that the hearing officer's ruling was a proper exercise of discretion.

³ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

In the absence of exceptions thereto, the Board adopts, pro forma, the hearing officer's recommendation that allegations (a) and (b) be overruled.

⁴ Because we find that the described objectionable conduct warrants setting aside the election, we find it unnecessary to address the hearing officer's finding that the Employer threatened to reduce wages and benefits if the employees selected the Union.

¹ All subsequent dates refer to 1983 unless otherwise indicated.